

**24<sup>TH</sup> FEDERAL LITIGATION COURSE**  
**SYSTEMATIC ANALYSIS OF CASES IN FEDERAL LITIGATION**

***OVERVIEW***

**I. GENERAL**

- A. Military decisions, programs, and policies are subject to review by the federal courts.
- B. Themes common to litigation against the military departments:
  - 1. Suits almost exclusively in the federal courts.
  - 2. Suits are generally filed against a federal agency.
  - 3. The military and its officials are involved.

**II. METHOD OF ANALYSIS**

- A. Case management and responsibility.
- B. Department of Justice representation and removal of case to federal court.
- C. Power of the federal court to decide case: Does the federal court have jurisdiction?
  - 1. Grants of jurisdiction.
    - a) Constitutional limits.
    - b) Statutory grants.
  - 2. Justiciable case or controversy.
    - a) Adversarial.
      - (1) Advisory opinions.
      - (2) Ripeness.
      - (3) Mootness.
      - (4) Standing.
    - b) Political question.

- D. Federal Remedies: Can the court award the relief demanded?
  - 1. Sovereign immunity.
  - 2. Types of remedies:
    - a) Money.
    - b) Mandamus.
    - c) Habeas corpus.
    - d) Injunctions.
    - e) Declaratory judgment.
- E. Exhaustion of administrative remedies: Has the plaintiff pursued all intra-agency remedies?
  - 1. Basic doctrine.
  - 2. Remedies available.
  - 3. Exceptions.
- F. Reviewability: Should the court review and decide issues in controversy?
  - 1. APA.
  - 2. Mindes.
- G. Scope of review: To what extent should the federal court substitute its judgment for that of the military decision-maker?
- H. Official Immunity.
  - 1. Constitutional Tort Lawsuit.
  - 2. Common Law Tort Lawsuit.

### **III. CONCLUSION.**